

(1936) 08 MAD CK 0032
In the Madras High Court

T. Syed Pitchai Rowther and Others		APPELLANT
	Vs	
K. Devaji Rao and Others		RESPONDENT

Date of Decision : 31-08-1936

Acts Referred:

Citation : AIR 1937 Mad 21 : 166 Ind. Cas. 777 : (1936) 71 MLJ 611

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—From time immemorial there has existed a temple known as the Muthalamman temple on the village site of Ganguvaripatti in the

Periyakulam Taluk and in comparatively recent years the Mohammadans of the village have erected a mosque a short distance away. In order to

avoid friction between the two communities certain executive orders have been passed; but apparently there has been no trouble. The temple is

situated in an unoccupied part of the village site and the worshippers of the temple have always congregated there on festival days for worship.

Adjoining the mosque to the east is a pound, which was granted to the Mohammadans on the express understanding that they should not build

over it and to the east of the pound is a plot that once* belonged to one Venkatachalam Chetti, who sold it in 1914 to the mosque. The Hindus

now seek to restrain the Mohammadans from interfering with the worship and, in particular, from opening doors on the southern side of the plot

recently purchased by them and from doing any other act which would offend the susceptibilities of the Hindus. The District Munsif gave an

injunction permanently restraining the Mohammadans from "interfering with the worship at festivals on the above site by passing along the same or

by any user of their site, north of the above site, or of any structure on it, in a way obnoxious or interfering with the rights of such worship by the

Hindus, during the period of their worship or festivals on the suit site". The learned Subordinate Judge of Dindigul, in appeal, went even further and

issued an injunction restraining the Mohammadans from opening any doors to the south of their plot.

2. It is contended in this Court that one of the shops is erected on the site of the pound, in regard to which the Mohammadans had given an

undertaking; but the plaintiffs did not allege this in their plaint and a perusal of the sale deed would indicate that in fact the defendants have not done

so.

3. The Mohammadans have at no time denied the rights of the Hindus to worship on the site and to congregate there at times of festivals. They

state, however, that from time immemorial they have been accustomed to walking across the natham and there is evidence that some sort of path

does exist; and such usage is recognised in the survey plan. Mr. S. Srinivasa Aiyangar would put the rights of the Hindus to worship and

congregate on a higher level than the rights of a pedestrian to cross the natham, on the ground that no person can acquire an easementary right to

walk across the village site whereas the Hindus have acquired a right with which even the Government cannot now interfere, even though the site is

grama natham and therefore poramboke. Although the Mohammadans do not deny that the Hindus have always worshipped there and have a right

to do so, there is no finding that the rights of the Hindus to congregate there stands any higher than the rights of the villagers to walk across the site

or to stand there; and certainly the Mohammadans have not conceded this. D.W. 1 states in his evidence that Mohammadans do stand on the site

at times of festivals and there is no objection to their doing so. There is nothing in the evidence to indicate that it is impossible for both sides to

enjoy their rights. This being so it is difficult to see how the Mohammadans can be restrained from enjoying their own property, which they have

legally purchased for good consideration. I need not quote authorities which lay down the elementary proposition that a person is entitled to enjoy

his own property in any way he pleases provided that he does not create a nuisance or interfere with the rights of others. This was well put in

Kasim Alikhan v. Brij Kishore (1870) 2 N.W.P. 182:

parties are at liberty to build what structure they please upon their own land; but if they interfere with the free enjoyment of their neighbour's

property, they may become liable in damages for the injury that they do.

4. The simple question therefore is whether in fact the Mohammadans have interfered or have given any cause for apprehension that they will

interfere with any of the rights of the Hindus. As far as can be seen from the evidence the only right that the Hindus have is to congregate there and

to kill fowls, goats, and other animals, and there is no reason at all to think that the Mohammadans would object to this or that they have ever

attempted to obstruct the Hindus in the exercise of these practices. I do not see how the opening of doors on the southern side can in any way

interfere with the rights. A few customers may go to the shop while the festival is on; but it cannot be contended that customers come in such large

numbers that the Hindus would be prevented from carrying out their worship or that they would be in any way inconvenienced thereby.

5. Another argument put forward, which seemed to gain favour with the lower Courts, was that if the Mohammadans chose to sell mutton in their

shops the Hindus might object. It would, however, appear that this festival is largely attended by Pallans and other men of low caste. Animals are

slaughtered there and certain persons have of course mirasi rights in those animals; so that animals are sold by persons connected with the temple

for food. It seems most unlikely that such persons as would attend these festivals would object in any way to the sale of mutton in stalls at the site;

but even if there were any objection to the sale of any particular commodities in the shops I would still be of opinion that the Hindus would have no

right to restrain the Mohammadans from the sale of such.

6. The lower Courts have also given a declaration that the Hindus of the suit village have a right to assemble and worship. Although no strong

objection has been raised to this injunction, nevertheless, in view of the fact that the Mohammadans have never denied that the Hindus have such a

right, I think that such a declaration was improper. Similarly, no purpose is served in restraining the Mohammadans from interfering with the

worship at festivals when they have never done so and when there is no likelihood of their interfering. All that they desire is a free use of the site

which they have bought from their Hindu predecessor, and this they are entitled to do.

7. It is contended that as the site belongs to the Government the defendants have no right of access to it from the south; but that point was not

raised in either of the lower Courts and as the Government is not a party, there is no necessity to go into that question now. In order to avoid a

misunderstanding, I would make it clear that nothing in this judgment is intended to decide any question as to the rights of either the plaintiffs or the

defendants with regard to this site as against the Government.

8. I allow the appeal with costs throughout and dismiss the suit. (No leave.)